

**TESTIMONY OF VIRGIL LEWIS, VICE-CHAIRMAN OF THE YAKAMA NATION,  
BEFORE THE HOUSE RESOURCES SUBCOMMITTEE ON WATER AND POWER**

Mr. Chairman and members of the Committee, thank you for the opportunity to speak before you today. My name is Virgil Lewis and I am Vice-Chairman of the Yakama Nation Tribal Council. Thank you for providing me with the opportunity to testify before you today. I think it is important for you and the members of the Committee to hear how the tribes feel about the Endangered Species Act, the Snake River Dams and the recent federal court ruling regarding the 2004 Federal Columbia River Power System (FCRPS) Biological Opinion, commonly known as "the BiOp." I look forward to sharing with the committee the challenges of rebuilding long-depressed stocks of Columbia River salmon to sustainable and harvestable levels and our commitment to pragmatic and effective actions to do just that. And finally, I will share with this committee, in the form of recommendations, our sincere and seasoned belief that the long-term realization of a truly "balanced" and working river lies within coordinated and effective sovereigns implementing coordinated and effective measures. I will occasionally refer to "tribes" in plural. In those instances I'm referring to the tribes of the Columbia River Inter-Tribal Fish Commission of which the Yakama Nation is a member and shares unified goals with the Nez Perce, Umatilla and Warm Springs Tribes.

I have heard much discussion about how important the Snake River Dams are to the economy in certain areas and how the recent decision by Judge Redden intended to protect salmon should be reversed because of its potential impact on the economy. I am not here to dispute those feelings but I am somewhat saddened by these statements because they infer that the salmon are not important - or certainly that they are not as important - as other resources. In 1905 in the famous *Winans*<sup>1</sup> case, the United States Supreme Court stated quite clearly how important salmon were to us. The Supreme Court said for the Yakama people that salmon "were not much less necessary to the existence of the Indians that the atmosphere they breathed." Let me repeat it simply: Salmon are as important as the air we need to breath.

Mr. Chairman, no people on the face of this earth have been more negatively affected by the destruction of the salmon runs than have the Indian people of the Columbia River. Salmon are a critical part of our religion, they are a critical part of our culture, they are a staple in our diet and they have been the basis of our economy. Fishing is how many of our members earn their livelihood. To us, salmon fishing is not recreation; it is a major aspect of our lives. The federal government committed to us, in no uncertain terms, to protect our treaty fishing rights when the Executive Branch negotiated and the Senate of the United States ratified our Treaty. So important was fishing to our livelihood and culture that our elders made sure to reserve the right to fish for future generations in a treaty with the federal government that was negotiated not far from here exactly 150 years ago today. The resulting Treaty of June 9, 1855 was not a granting of rights to the Indians, but rather a reservation of rights already held by them, which included the right to continue making a living from the river. Today, few tribal families can earn their livelihoods from fishing, and that solemn promise made by the United States 150 years ago to preserve our way of life stands unfulfilled.

We hope you will take this into account in your deliberations on this matter and particularly when you talk about keeping the Columbia and Snake "working rivers." Our summer chinook fishery closed totally in 1964 and our spring Chinook fishery closed in 1977. They remained totally closed for nearly 30 and 20 years, respectively. This had the equivalent economic and cultural impact on the Indian people of no barges to Lewiston or crops in southern Idaho for that same period, yet we have seen no congressional hearings, no disaster declarations or relief in any form. For the last 40 years the Columbia

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<sup>1</sup> United States v. Winans, 198 U.S. 371, 381 (1905)

has been a “working river” only for some, with little consideration for those left out. Today we ask only for it to be a working river for all. We have sought relief in the only forum where our voices seem to be heard, the federal courts. Perhaps this committee can change that fact and demand that those who make decisions on the uses of this river fairly include and listen to all those who are impacted by those decisions. Without such a commitment there can be no working river for all.

Having said that, we reached the decision to keep Snake River dam breaching an available option based upon culture, science and economy. We recommend staying open to the possibility of breaching because of the weight of scientific evidence and because we believe it can be properly planned, engineered and mitigated for. However, we realize that none of the dams on the mainstem Columbia are likely to be breached, nor would we necessarily call for such action. My tribal constituents are diverse and widely vested in the Eastern Washington economy. We are fishermen, farmers, ranchers, small business owners. We are taxpayers and utility rate payers. Our tribal economy is heavily dependent upon the health of the broader economy.

Nevertheless, our traditional economy - our salmon economy - has collapsed, and aggressive actions are needed to restore it. Widescale displacement of our people to make way for dams has been compounded by steady declines in fishing opportunity. Our fisheries are a mere fraction of their historic levels, with tribal fishing in the Lower Columbia at approximately 10% of its historic level. Above Lower Granite dam the tribal fishery is 1/10<sup>th</sup> of one-percent of its historic level. This spring has been a particular disappointment as one of the lowest returns on record of spring Chinook over Bonneville Dam. Treaty ceremonial fishing was closed prematurely for the first time in a decade as the expected abundance of fish failed to arrive. Several tribal longhouses did not have adequate fish for the traditional first salmon and first foods ceremonies. The Celilo longhouse had to resort to the remnants of last year’s catch and to accept fish donated by other fishing groups. These are cultural and religious practices we have been undertaking for thousands of years. I can not overstate the frustration and anger of my people at this turn of events. The Yakama Nation has hundreds of families that rely on commercial fishing, in whole or in part, as their primary occupation and source of income. Regrettably, our people will not have a single day of commercial fishing this year. The people of the Yakama Nation have sacrificed and paid a heavy price for the good of the region, in the form of hydroelectric power development. If other stakeholders were willing to sacrifice a fraction of what we have, the salmon runs could be significantly restored.

### **Aggressive non-breach and the pragmatic approach**

This is why the tribes made a practical decision to take on our share of the responsibilities to implement the “aggressive non-breach” strategies of the 2000 Biological Opinion. That plan was, in our estimation, able to succeed only if all of the reasonable and prudent actions were implemented in full, and on schedule. We worked to rebuild Snake River Fall Chinook by supplementing the naturally spawning population with Lyon’s Ferry hatchery adults. We also developed recommendations in our River Operations plans that addressed the need for the Columbia and Snake Rivers to operate more like a dynamic river and less like a slackwater channel. Every year since 1999, the tribes have sent to the federal operators a river operations plan with specific recommendations for flows, spill, fish transportation, adult passage and fish facility operations. These plans are based upon the best available science and developed through prior collaborative biological opinion processes. Unfortunately, the federal operators rarely responded to tribal input and failed to provide good river conditions. Our analysis of the performance record found overwhelming failure on the part of the federal government to

adequately fund and implement the 2000 Salmon Plan over the course of 4 years. The analysis concluded that from 2001-2004, the federal government failed to complete, on average, over 70% of the measures called for in the federal Salmon Plan and only funded roughly 50% of the money needed. With that, our tribes had no choice but to join litigation on the 2000 Biological Opinion. Had our recommendations – which were compatible with recommendations of many other experts – been implemented between 2000 and 2004, Judge Redden’s ruling of two week ago would not have been necessary.

## **The 2004 BiOp**

Judge Redden’s opinion, delivered on May 26, reflects the views expressed by the tribes through our active participation in this case. Like Judge Redden, the tribes were dissatisfied with the lack of collaboration and remediation for the basic infirmities in the 2000 FCRPS BiOp and the wholesale change in the biological framework in the 2004 FCRPS BiOp. The judge’s well-grounded, comprehensive and unambiguous opinion offers a renewed opportunity for the federal government to address the tribes’ proposals for salmon restoration, including the tribes’ 2005 River Operations Plan and future plans. We look forward to a real dialogue with the federal government about achieving the complementary mandates of the ESA and other federal laws, particularly treaty fishing rights.

## **Injunctive relief**

You’re aware that a federal judge will consider a request for injunctive relief this Friday that is designed to increase survival of migrating juvenile Snake River Fall Chinook, an ESA listed stock and one that severely constrains the tribes’ fall fisheries. The actions in the relief request are a blend of increased flows, spills and reservoir drawdowns designed to increase water velocities by only 10%. However, by doing this we can achieve a 300% survival increase in this stock. These measures will have only minor impact to residential ratepayers, raising their average monthly rate by 11 cents.

Mr. Chairman, I understand your concerns about ESA litigation and want you to know that the Yakama Nation works first and foremost to collaborate and negotiate agreements. In that spirit I would like to offer this committee some recommendations, some of which you would have an active role and others which I hope you will consider supporting in principle.

## **Recommendations**

### **1) Mitchell Act**

Mr. Chairman, before I became a member of the Yakama Nation Tribal Council I was the manager of the Cle Ellum Hatchery, a facility on the innovative cutting edge in of hatchery reform. Hatcheries should play a role in salmon recovery and the tribes can provide leadership. We have proposed a biologically credible integrated plan to modify hatchery management practices throughout the basin in order to supplement rather than supplant natural spawning salmon populations.

Similarly, restoring Pacific salmon and providing for sustainable fisheries requires using at least some of the Columbia River (Mitchell Act) hatchery program to *supplement* naturally spawning stocks and populations. To accomplish this goal Congress should allocate \$36 million for the tribes and states, as co-managers, to jointly reform the Mitchell Act hatchery program.

Of this amount, \$9 million, or 25% of enacted funding, should be contracted to the tribes for new or expanded supplementation projects. In addition, to carry out activities identified as necessary in the Federal Caucus All-H Paper and the BiOp, provide \$20.6 million for the Columbia River facilities program area for screens and fish passage programs.

## **2) Linking authorities and processes**

A key focus between the tribes and federal executives, state and federal fishery agencies, the Pacific Salmon Commission (PSC) members and the Northwest Power and Conservation Council (NPCC) must be the linkage between the authorities/processes that guide salmon recovery, restoration and management. These key authorities/processes include:

**1855 Treaties:** These agreements between our tribes and the United States are the supreme law of the land under the U.S. Constitution (covered by the Supremacy Clause). Under the treaties - as the Supreme Court has stated on numerous occasions - the United States has a clear obligation to protect salmon runs so that our treaty fishing rights can be implemented.

**US vs. Oregon:** This, the oldest continuing case in the federal district courts was primarily aimed at defining the treaty fishing right particularly in terms of allocation of harvest among the parties and necessary escapement.

**Northwest Power Act:** Passed in 1980 by the Congress and shortly thereafter adopted by the states of Oregon, Washington, Idaho and Montana, this Act was interpreted by the Ninth Circuit Court of Appeals as an interstate compact conferring authority upon the governor-appointed NPCC, to direct the use of the Bonneville Fund for protection, mitigation and enhancement of Columbia River fish affected by any hydroelectric project in the basin. Various federal statutes including this one discuss giving equal consideration to power production and fishery and fishery habitat protection. This has not happened. The Northwest Power and Conservation Council - using Bonneville Power Administration dollars - oversaw a comprehensive subbasin by subbasin analysis of each of the subbasins with the Columbia River. A comprehensive plan for habitat restoration of each subbasin is on the books and ready to be implemented. This plan will also create significant employment, particularly in the eastern side of the Columbia Basin. The Columbia Basin Fish and Wildlife Authority (CBFWA) has also examined what is needed and the Yakama Nation and CBFWA are in agreement on a comprehensive plan. It has to be implemented and paid for by the BPA who are showing little willingness to do so and simply acting as if there is no problem the same business as usual approach we have seen in recent years. The costs to the ratepayers would be minimal. At the most, one dollar per month for customers of utilities that buy all their power from BPA and less for customers of utilities that don't buy all their power from BPA. If the Congress is serious about addressing this situation, using your influence with BPA on the forthcoming "Rate Case" would greatly assist the restoration of these salmon runs and would do so without additional federal appropriations.

**Pacific Salmon Treaty:** Canada and the United States adopted the Pacific Salmon Treaty in 1985 to provide for the conservation of Pacific salmon stocks, including those originating from the Columbia River.

The processes listed above are authoritative in that they are derived from treaties, federal statutes, and federal judicial interpretation. Except for US v. Oregon, each process is linked to funding sources including the Bonneville Fund, appropriations such as the PCSRF and PST budgets. Each process, however, is developing a series of goals and objectives that are not necessarily linked to those

arising from the other processes. The task of linking the processes is a task of leadership. In the absence of leadership that recognizes the linkages, the processes default to the organizational staff leading them and piecemeal planning results at a high cost without the likelihood of implementation.

An important step toward making linkages is to consolidate the technical work under each process and provide a means to address common data and analysis for each process in a unified manner. The tribes are focusing major attention on this issue but without leadership from the executives of both federal and state agencies, we are unlikely to be successful.

## **Conclusion**

In closing I'd first like to reaffirm the testimony provided to this committee on May 6th by Olney Patt, Jr., executive director of the Columbia River Inter-Tribal Fish Commission. I would also like to say that while I have not had time to run this testimony by the other members of the Commission, that I fairly confidant that the Warm Spring Tribe and the Umatilla Tribe of Oregon and the Nez Perce of Idaho, would share the perspective I have shared with you today.

Mr. Chairman and members of the Committee, when I visit our tribal families along the Columbia River it is the most uplifting but difficult tasks of being a tribal leader. Tribal fishers are proud people, hardworking, a strong community. It does my heart good to know that the Columbia River's original working class is strong and vital. I'm honored to represent them. But they're wise to false hopes and promises, and they've seen a lot of them. They deserve assurances. We all do.

Salmon will not recover without a river that acts like a river. While recent ocean conditions have been favorable for hatchery returns, the wild stocks are still doing very poorly and are in danger of extinction because of poor river conditions. The federal operators must not shirk their duty to provide good river conditions that support salmon survival rates that are necessary to meet recovery of Columbia River stocks to sustainable, harvestable levels. The Yakama Nation is committed to working with Congress, the Administration, the States and other Tribal governments to realize an equitable, affordable and effective salmon restoration plan.

Mr. Chairman and members of the committee, on behalf of the Yakama Nation I thank you again for this opportunity to speak with you today and would be happy to answer any questions you might have.